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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68117; File No. SR-NYSEMKT-2012-51)

October 26, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 140 and 141 of the NYSE MKT LLC Company Guide to Amend Annual Fees and Certain Other Listing Fees Included Therein and to Make Technical and Conforming Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 16, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of the fees included in the NYSE MKT Company Guide and to make technical and conforming changes. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Sections 140 and 141 of its Company Guide to amend certain of the fees included therein and to make technical and conforming changes. The Exchange proposes to immediately reflect the proposed changes in the Company Guide, but not to implement the proposed changes until January 1, 2013.³

The Exchange proposes to amend Section 140 of its Company Guide, which provides for Original Listing Fees. The Exchange proposes to increase the Original Listing Fee charged in connection with the listing of new shares of common stock or common stock equivalents, including securities issued by non-U.S. companies, for issuers with outstanding shares in excess of 15,000,000. The Original Listing Fee for such issuers would increase from \$70,000 to \$75,000.

The Exchange also proposes to amend Section 141 of its Company Guide to increase its Annual Fees for stock issues as follows:

- (i) for issuers with 50,000,000 shares outstanding or less, the Annual Fee would be increased by \$2,500 (or 9.1%), from \$27,500 to \$30,000;
- (ii) for issuers with 50,000,001 to 75,000,000 shares outstanding, the Annual Fee would be increased by \$3,500 (or 9.6%), from \$36,500 to \$40,000; and

³ The Exchange has proposed changes to the Company Guide, as reflected in Exhibit 5 attached hereto, in a manner that would permit readers of the Company Guide to identify the changes that would be implemented on January 1, 2013.

(iii)for issuers with shares outstanding in excess of 75,000,000, the Annual Fee would be increased by \$5,000 (or 12.5%), from \$40,000 to \$45,000.

The Exchange also proposes certain non-substantive changes. Specifically, the Exchange proposes to remove the asterisks and accompanying text that states that the Annual Fees are applicable as of January 1, 2010 because this text is obsolete and unnecessary.

The proposed changes to the Company Guide are intended to increase the overall revenue that the Exchange collects relating to listings from the issuers described above and to add clarity to the Company Guide. The Exchange's Original Listing Fees and Annual Fees have not been increased since 2009.⁴ The increased revenue will help to offset the costs related to such listings and the resulting value that such listings provide to the issuers. The Exchange's costs related to listings include, but are not limited to, rulemaking initiatives, listing administration processes, issuer services, and administration of other regulatory functions related to listing. The proposed change is not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its

⁴ See Securities Exchange Act Release No. 59560 (Mar. 11, 2009), 74 FR 11392 (Mar. 17, 2009) (SR-NYSEALTR-2009-02).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.⁷

The Exchange believes that amending Section 140 of the Company Guide to increase the Original Listing Fee for issuers with outstanding shares in excess of 15,000,000 and amending Section 141 of the Company Guide to increase the Annual Fees is reasonable because the resulting fees would help to offset the Exchange's costs related to listings. The fee increases also would reflect the value that listings provide to the issuers, and the Exchange does not believe the increases to be material. In this regard, the Exchange notes that it has not recently increased these fees, but continually enhances and upgrades the level of service it provides in the listings area, including with respect to technology, compliance, and other regulatory matters related to listings.⁸ The Exchange's costs with respect to listings include, but are not limited to, rulemaking initiatives, listing administration processes, issuer services, and administration of other regulatory functions related to listing. The Exchange believes that the proposed changes are reasonable because the increased fees would be used by the Exchange to offset, in part, these costs. As such, the Exchange believes that the proposed fee changes would have no negative impact on its ability to continue to adequately fund its regulatory program or the services the Exchange provides to issuers. In addition, the Exchange believes that the proposed fee increases are reasonable because the Exchange's Original Listing Fees and Annual Fees would still remain lower than a listing tier on at least one other exchange.⁹

⁷ The Commission notes that Section 6(b)(5) of the Act contains the provision that states rules of an exchange "are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers." See 15 U.S.C. 78f(b)(5).

⁸ See supra note 4.

⁹ For example, the entry fees for NASDAQ Global Market range from \$125,000 to \$225,000, and the annual fees range from \$35,000 to \$99,500. See NASDAQ Rules 5910(a)(1) and 5910(c)(1).

The Exchange also believes that the proposed Original Listing Fee increase for issuers with outstanding shares in excess of 15,000,000 is equitable and not unfairly discriminatory because the Exchange wants to continue to incentivize small and large issuers that are qualified to list on the Exchange to do so, and not raising the Original Listing Fees for smaller issuers will help maintain that incentive, as such issuers generally are more cost-conscious. The Exchange does not believe the proposed increase in the Original Listing Fee for issuers with outstanding shares in excess of 15,000,000 will be a disincentive to list on the Exchange or unfairly discriminatory because it is the same as the entry fee charged by another national securities exchange for such issuers.¹⁰ As such, this fee increase would allow the Exchange to remain competitive with other exchanges.

The Exchange believes that the proposed increases in Annual Fees also are equitably allocated and not unfairly discriminatory because all issuers will pay an increased amount in a narrow range of \$2,500-\$5,000 (or 9.1% to 12.5%) based on total shares outstanding.¹¹ By way of comparison, another exchange's last annual fee increase ranged from 0% to 16.7% across its various tiers based on total shares outstanding.¹² The Exchange believes that having slightly higher Annual Fee increases for issuers with more shares outstanding and a slightly higher fee

¹⁰ See NASDAQ Rule 5920(a)(1). NASDAQ and other exchanges also have differential entry fees based on total shares outstanding. For example, the listing fees for the New York Stock Exchange LLC ("NYSE") increase as the total number of shares outstanding at time of listing increases. See NYSE Listed Company Manual, Section 902.03.

¹¹ Like NYSE MKT, other exchanges also have differential annual fees based on shares outstanding. See NASDAQ Rule 5910(c); NYSE Listed Company Manual, Section 902.03; and NYSE Arca Equities, Inc. Schedule of Fees and Charges for Exchange Services, available at www.nyse.com/pdfs/NYSEArca_Listing_Fees.pdf.

¹² See Securities Exchange Act Release No. 61669 (Mar. 5, 2010), 75 FR 11958 (Mar. 12, 2010) (SR-NASDAQ-2009-081). The Exchange further notes that NASDAQ Rules 5910(c)(2), 5910(d)(5), and 5920(c)(4) provide NASDAQ with the discretion to waive all or part of the annual listing fees.

increase in this instance is equitable and not unfairly discriminatory because such issuers generally have a larger number of shareholders that benefit from the liquidity and transparency that the continued listing offers.

The Exchange believes its tiered fee structure, with issuers with more total shares outstanding paying relatively higher Original Listing Fees and Annual Fees, is equitable and not unfairly discriminatory. Total shares outstanding provides a simple, objective, and efficient metric to take into account the relative size of issuers so that the Exchange can continue to incentivize listing by both large and small qualified companies; other exchanges also use such a metric.¹³ Total shares outstanding also is a metric within each issuer's control that provides predictability with respect to fees and does not subject such fees to the volatility of the market or other market or general economic events outside the issuer's control (e.g., the average number of shares traded per day).

The Exchange further notes that it operates in a highly competitive market in which issuers can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and services to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

Additionally, the Exchange believes that the non-substantive changes that are proposed, which are technical and conforming changes, are reasonable because they will result in the removal of unnecessary and obsolete text from the Company Guide. These changes are also equitable and not unfairly discriminatory because they will benefit all issuers and all other readers of the Company Guide.

¹³ See supra notes 10 and 11.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-

NYSEMKT-2012-51 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2012-51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEMKT-2012-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

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¹⁶ 17 CFR 200.30-3(a)(12).